

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WAL-MART STORES EAST, LP,
Plaintiff,

v.

ZURICH NORTH AMERICA, INC.
d/b/a ZURICH AMERICAN INSURANCE
COMPANY,
Defendant.

CIVIL ACTION

NO.

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NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA:

PLEASE TAKE NOTICE that defendant Zurich American Insurance Company (“Zurich”), incorrectly named as “Zurich North America, Inc. d/b/a Zurich American Insurance Company”, by and through its undersigned attorneys, files this Notice of Removal pursuant to 28 U.S.C. §§1332 and 1441, removing the above-captioned case filed by plaintiff from the Court of Common Pleas of Philadelphia County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania. The grounds for removal are as follows:

HISTORY OF CASE

1. The instant action was commenced on March 26, 2021, by the filing of a Complaint by plaintiff, Wal-Mart Stores East, LP, in the Court of Common Pleas of Philadelphia County, Pennsylvania, No. 210302707. A true and correct copy of plaintiff’s Complaint is attached hereto at **Exhibit A**.

CITIZENSHIP OF PARTIES

2. Upon information and belief, plaintiff, Wal-Mart Stores East, LP (hereinafter “Wal-Mart”), is a Delaware limited partnership with its principal place of business located at 702 SW 8th Street, Bentonville, Arkansas 72716. *See* Complaint at ¶1.
3. Upon information and belief, Walmart Inc. is the ultimate and sole (100%) owner of Wal-Mart Stores East, LP, through various wholly-owned operating entities as follows:

Walmart Inc. (“WMI”) is the sole (100%) owner of Wal-Mart Stores East, LLC (“WMSE”), which is an Arkansas corporation with its principal place of business in Arkansas. Wal-Mart Stores East, LLC, is the sole (100%) owner of WSE Management, LLC, and WSE Investment, LLC, which are both Delaware limited liability companies whose principal places of business are in Arkansas. WSE Investment, LLC, is the 99% owner and limited partner of Wal-Mart Stores East, LP. WSE Management, LLC, is the 1% owner and general partner of Wal-Mart Stores East, LP. Accordingly, Wal-Mart Stores East, LP, is owned by two Delaware limited companies whose sole owner and shareholder is an Arkansas corporation with its principal place of business in Arkansas (WMSE), which in turn is wholly-owned by a Delaware corporation with its principal place of business in Arkansas (WMI). *See* Complaint at ¶2.
4. For diversity jurisdiction purposes, pursuant to 28 U.S.C. §1332, plaintiff is a citizen of the States of Delaware and Arkansas at all times material hereto.
5. Defendant Zurich American Insurance Company is a corporation duly organized, existing, and incorporated under the laws of the State of New York, with its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196.

6. For diversity jurisdiction purposes, pursuant to 28 U.S.C. §1332, Zurich is a citizen of the States of Illinois and New York.

7. There is complete diversity between plaintiff and defendant pursuant to 28 U.S.C. §1332.

THIS REMOVAL NOTICE IS TIMELY

8. The Complaint was filed on March 26, 2021 and is alleged by plaintiff to have been served on Zurich by certified mail on March 31, 2021.

9. Pursuant to 28 U.S.C. §1446(b), “[the] notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading.”

10. Thirty (30) days from the first purported service upon defendant is April 30, 2021. As this Notice is being filed on or before that date, Zurich’s Notice of Removal is timely pursuant to 28 U.S.C. §1446(b).

AMOUNT IN CONTROVERSY

11. Plaintiff seeks a declaratory judgment with respect to Zurich’s alleged duty to defend and indemnify plaintiff, as a purported additional insured, in an underlying personal injury, wrongful death, and survival action captioned *Arthur Long, Administrator of the Estate of Rosalyn L. Robinson, and Arthur Long v. Wal-Mart Stores East, Inc., Wal-Mart Stores, LP, Cedarbrook Plaza, Cedarbrook Plaza Lot Stores, Inc., Cedarbrook Plaza Management Co., Cedarbrook Plaza, Inc., Nassimi Corporation, Nassimi Realty, LLC, Nassimi Realty Holdings, and Nassimi Realty Corp.*, Court of Common Pleas of Philadelphia County, Pennsylvania, No. 191203322 (the “Underlying Action”). See Complaint at ¶¶6-7. A copy of the Complaint in the Underlying Action is attached to plaintiff’s Complaint at Exhibit A.

12. In the Underlying Action it is alleged that Rosalyn Robinson sustained fatal injuries when she ““was caused to trip and fall on a rise in the concrete pavement cement block crease adjacent to the store entrance’ of Walmart Store #5229...” *Id.* at ¶9.
13. In the Underlying Action it is alleged that plaintiff’s decedent suffered serious, and eventually fatal injuries, incurred significant medical expenses, and suffered severe physical pain and trauma, mental upset and anguish and humiliation. *See* the Complaint in the Underlying Action at ¶¶14-18.
14. Plaintiff in the Underlying Action seeks damages in excess of \$50,000 in each Count against Wal-Mart. *See* the Complaint in the Underlying Action at Counts I, II, XI, XII, at ad damnum clauses.
15. Plaintiff alleges that it qualifies as an additional insured under a general liability insurance policy issued by Zurich to the Cedarbrook Plaza, policy No. CPO-6541241, with respect to the claims asserted against Wal-Mart in the Underlying Action. *See* Complaint at ¶¶6, 7, and 16.
16. Plaintiff alleges that “it continues to incur extensive defense costs and attorneys’ fees, which are Zurich’s responsibility given Walmart’s status as an Additional Insured on the policy issued to Cedarbrook Plaza,” *id.* at ¶28, and demands reimbursement of those expenses, as well as a declaration that Zurich must indemnify Wal-Mart with respect to the Underlying Action, “together with an award of costs, attorneys’ fees, interest, and such other relief as the Court deems just and proper.” *Id.* at ¶29 and ad damnum clause.
17. It is believed, and therefore averred, that, from a reasonable reading of the plaintiff’s Complaint, plaintiff seeks declaratory relief and alleges monetary damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

REMOVAL PREREQUISITES HAVE BEEN MET

18. This action is one over which this Court has original jurisdiction under 28 U.S.C. §1332(a) and is one that may be removed to this Court by the defendant pursuant to 28 U.S.C. §§1441(a) and (b), in that it is a suit constituting a dispute between citizens of different states and the matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.
19. The Notice of Removal has been timely made pursuant to 28 U.S.C. §1446(b).
20. Defendant has sought no similar relief with respect to this matter.
21. Concurrent with the filing of this Notice, defendant is serving this Notice upon plaintiff's counsel, and will promptly file a copy of the Notice with the Prothonotary of the Court of Common Pleas of Philadelphia County.

WHEREFORE, Notice is given that this action is removed from the Court of Common Pleas of Philadelphia County to the United States District Court for the Eastern District of Pennsylvania.

Respectfully Submitted,

By: /s/ Louis A. Bové
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Date: April 29, 2021